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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1944

No. 291

WILLIAM F. HERRON, *Petitioner,*

vs.

THE STATE BAR OF CALIFORNIA, *Respondent.*

PETITION FOR WRIT OF CERTIORARI
to the Supreme Court of the State of California.

WILLIAM F. HERRON,
645 Mills Building, San Francisco 4, California,
Petitioner in Propria Persona.

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To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

The petition of William F. Herron for a writ of certiorari to the Supreme Court of the State of California, respectfully shows to Your Honors:

SUMMARY AND SHORT STATEMENT OF THE MATTER INVOLVED.

In the year 1927 the legislature of the State of California passed a statute known as the State Bar Act, which was later codified under the title of Division III of the Business and Professions Code. The portions of the statute material to the consideration of the question here presented are annexed to this petition as Appendix B. They may be summarized as follows:

Every attorney practicing law in the State of California is made a member of the State Bar of California, which is described as a public corporation. He is compelled by the Act to pay dues to this corporation, whose corporate powers are exercised by a board of governors consisting of 15 members chosen from different districts throughout the State. The board of governors is empowered to fix the amount of these dues up to $10 per annum. If these dues are not paid within a certain period of time, a penalty is added for their nonpayment. The board of governors is empowered to fix the amount of this penalty, the only limitation being that it must not exceed double the amount of the dues. If the dues and penalties are not paid, he is suspended from practice until they are paid.

The money received by the corporation from the members of the bar who are compelled to be members of the organization becomes the property of the corporation. (See Section 6144, Appendix B.)

The Act gives the board of governors plenary power to expend the funds as they see fit. They are not required to account to the membership of the so-called corporation for their expenditures. No provision is made by which the members of the board can be removed or called to account even for the grossest malfeasance or corruption. Neither the Supreme Court nor any other court of the State of California has any authority over the board of governors. There is, indeed, a provision of the Act (Section 6145) that the board shall certify annually to the Chief Justice of the Supreme Court a statement showing **the total amount of receipts and expenditures** for the 12 months preceding. This procedure, however, is a mere gesture, because the statement is not required to be itemized, and the Chief Justice is given no power either to approve or disapprove the statement, and no provision is made for the filing of any exceptions to the account. In other words, the board of governors may expend the funds of the organization in any manner that they deem necessary to carry out the purposes of the Act without accounting for the funds of which they are the trustees. They are clothed with absolute immunity; they are answerable to no earthly power.

In Appendix B the sections of the Act relative to disciplinary proceedings are set forth. The State Bar is empowered without the filing of any complaint, under oath or otherwise, to initiate proceedings against any member of the profession looking toward his disbarment, suspension or other disci-

pline. These proceedings may have their origin in statements in the public press, public rumor, idle gossip, or anonymous letters or telephone calls. Section 6044 specifically provides as much because it confers upon the board or any other local administrative committee the right to initiate and conduct investigations of all matters affecting the practice of law or the discipline of lawyers without the filing or presentation of any complaint. The State Bar is both prosecutor and judge. This rule places every member of the profession at the mercy of any person who dares not or will not come forward publicly or present his accusation under oath, but who whispers his accusation to some official or employee of the organization. The accused is then summoned before what is known as a pre-investigating committee without even being informed of the nature of the accusation against him or the name of his accuser. If the investigating committee decides that formal proceedings are justified, the matter is then referred to another administrative committee which hears evidence under oath, and the accused attorney is entitled to appear and defend in person or by counsel, though the committee may admit or exclude any evidence that it sees fit, and in none of the cases passed upon by the Supreme Court of California has the Supreme Court reversed a recommendation of the board of governors for the improper admission or exclusion of evidence.

If the administrative committee makes a recommendation for disbarment, suspension or other disci-

pline, a transcript of the proceedings is sent to the board of governors, which may either adopt, diminish or increase the penalty. The language of the Act is that the board may "recommend" disbarment, suspension or other discipline, but this act of the board is more than a mere recommendation. It has the effect of a final judgment unless within 60 days after the recommendation is filed in the Supreme Court the accused lawyer presents a petition to that Court to review and reverse the action of the board. (Section 6084, Appendix B, page 34.) The Supreme Court of California has construed this provision of the act to mean that the court is powerless to do anything else than order the disbarment or suspension of the attorney if no such petition is filed.

It was so held by a majority of the court in the case of

In re McKenna, 16 Cal. (2d) 610, 107 Pac. (2d) 258,

though Justice Carter, in a powerful dissenting opinion says:

> "I cannot yield to this suggestion of impotency on the part of this court, and I refuse to allow myself to become a rubber stamp and give my approval to a recommendation or decision which is not only shocking to my sense of justice, but constitutes an encroachment upon the judicial power vested in this court by the constitution of California."

Your petitioner, who is 58 years of age, and who was admitted to practice law in California on Oc-

tober 5, 1909, eighteen years prior to the enactment of the statute, was proceeded against by the State Bar of California on a charge that he practiced law while under suspension for the nonpayment of the dues and penalties fixed by the board of governors in that he filed an action at law in the Superior Court of Marin County. He appeared before the investigating committee and objected to the proceedings upon the ground that the revenue provisions of the State Bar Act were invalid and repugnant to the due process of law clause in the Fourteenth Amendment to the Constitution of the United States. This objection was overruled. The administrative committee recommended that he be suspended from the practice of law for a period of 90 days, but the board of governors recommended disbarment. This recommendation was followed by the Supreme Court of California in the annexed opinion. (Appendix A.)

There were two other charges pending against petitioner, but all three were consolidated and only one opinion was rendered. As only one order was made in the three proceedings, the federal question is properly before the court. Justice Carter dissented from the judgment and decree of disbarment, and filed a dissenting opinion which is printed in Appendix A. Thereafter, and on May 3, 1944, the Supreme Court of California denied a petition for a rehearing, with Justice Carter again dissenting. On the same day Justice Carter, pursuant to the provisions of Section 350, Title 28 U. S. C. A., signed an order staying the execution and enforcement of the judgment and de-

cree for a period of three months to enable petitioner to apply for and obtain a writ of certiorari from this Court.

The question to be determined by this Honorable Court is whether an attorney at law admitted to practice in all the courts of the State can be deprived of his right to engage in his chosen vocation because of his failure to comply with the provisions of a statute which requires him to pay, **not a tax imposed by the State for the purpose of raising revenue, or a license imposed for the purpose of regulation and revenue, but a tribute to a corporation which is permitted to retain all moneys paid by members of the profession pursuant to the provisions of the Act without accounting for them, which funds become the permanent property of the corporation.** Under the rule that the test of constitutionality is "not be what has been done under it, but what may by its authority be done"

(*Roller v. Holly,* 176 U. S. 398, 20 S. Ct. 410, 44 L. Ed. 520;

Bennett v. Davis, 90 Me. 102, 37 Atl. 864;

Stuart v. Palmer, 74 N. Y. 188;

Dewell v. Commissioners, 232 Ill. 215, 83 N. E. 809;

In re Grout, 105 App. Div. 98, 93 N. Y. S. 711;

In re Lambert, 134 Cal. 626, 66 Pac. 815),

the State Bar Act should be held unconstitutional by reason of the possibility that the imposition of the dues would result in the enrichment of the corporation, and the placing in the hands of the individuals

who compose its board of governors the control of the funds so accumulated. But this possibility has ripened into an actuality. The State Bar of California issues a publication known as The Journal of the State Bar of California. In the issue of this publication for January and February 1944, a copy of which is transmitted with the record to this Honorable Court for its inspection, there appears at page 17 a statement of the income and expenses of the organization for the year ending December 31, 1943. This statement shows total receipts from dues, after deducting refunds made to members of the Bar serving in the Armed Forces of the United States, of $109,986, and total receipts of $136,051.43. After payment of all expenses there remains in the treasury of the State Bar $67,233.82 in cash and $10,000 in United States War Bonds, or a total of $77,233.82. This sum of money under the provisions of the statute is the property of the State Bar, which the board of governors may expend without let or hindrance, in any manner that they see fit. That they have not and will not hesitate to spend it for objects utterly foreign to the regulation of the practice of law, which, as we shall presently show, is the sole purpose for which a valid license fee could be imposed, is revealed by the fact that during the year 1943 the sum of $11,796.25 was expended for so-called war work and public relations, and $2515.96 was expended for the committee on the administration of justice whose functions are to maintain a lobby at the State Legislature. On page 14 of the same publication it appears

that the board of governors made certain appropriations for the year 1944. Passing by all items that might by some peradventure be regarded as legitimate expenditures, we find (page 16) that the sum of $9000 is appropriated to engage the firm of Lee & Losh as public relations counsel for the Bar. What possible necessity there could be for paying a gratuity to a favored firm of public relations counsel as a means of regulating the practice of law beggars the comprehension. It is, of course, an absolute misappropriation of the funds of the Bar, but under the statute there is no remedy in the courts or elsewhere.

To recapitulate, **it is the contention of petitioner that the act takes private property for a private use, and that such taking is a deprivation of property without due process of law within the meaning of the Fourteenth Amendment.**

STATEMENT PARTICULARLY DISCLOSING THE BASIS UPON WHICH IT IS CONTENDED THAT THIS COURT HAS JURISDICTION TO REVIEW THE JUDGMENT IN QUESTION.

(A) The statutory provision believed to sustain the jurisdiction is Section 344, Subdivision B, Title 28 U. S. C. A.

(B) The date of the judgment of the State Court sought to be reviewed was April 3, 1944, but by the terms of the judgment itself it was not to become effective for 30 days thereafter. On May 3, 1944, the State Court denied a rehearing and this last date

was the date on which the original judgment became effective for the purpose of review on certiorari.

(*Chicago Great Western Ry. Co. v. Basham,* 249 U. S. 164, 39 S. Ct. 213, 63 L. Ed. 534.)

(C) That the nature of the case and the rulings of the State Court were such as to bring the case within the jurisdictional provisions relied on is sufficiently set forth in the preceding summary and statement of the matter involved, and from the annexed opinion of the State Court, and repetition thereof is omitted in the interest of brevity.

(D) The cases believed to sustain the jurisdiction are in part as follows:

New York v. Connelly, 7 Wall. 16, 19 L. Ed. 57;

Millsaps College v. City of Jackson, 275 U. S. 129, 48 S. Ct. 94, 72 L. Ed. 196;

Chesebro v. La. County Flood Control District, 306 U. S. 459, 59 S. Ct. 622, 83 L. Ed. 921;

Senior v. Braden, 295 U. S. 422, 55 S. Ct. 800, 79 L. Ed. 1520;

Seabury v. Green, 294 U. S. 165, 55 S. Ct. 373, 79 L. Ed. 834;

Minn. v. Nat. Tea Co., 309 U. S. 551, 60 S. Ct. 676, 84 L. Ed. 920;

American Express Co. v. Michigan, 177 U. S. 404, 20 S. Ct. 695, 24 L. Ed. 823.

STATEMENT OF THE GROUNDS UPON WHICH IT IS CONTENDED THE QUESTIONS INVOLVED ARE SUBSTANTIAL.

1. The right to practice law, like the right to pursue any other lawful profession, occupation or calling, is a valuable property right upon which no state can impose onerous or unreasonable burdens and of which no one can be deprived without due process of law. The right of an attorney to appear and argue cases acquired by his admission is not a mere indulgence, revocable at the pleasure of the court, or by an enactment of the legislature. His admission to practice is a judicial determination that he possesses the necessary qualifications of legal learning and good moral character. His right to practice is a right of which he can only be deprived for moral or professional delinquency and by a judgment of the court.

Ex parte Garland, 71 U. S. 333, 18 L. Ed. 366.

In his celebrated opinion in

Ex parte Wall, 107 U. S. 265, 2 S. Ct. 569, 27 L. Ed. 552,

Justice Field says:

> "But the possession of the power being conceded, and its exercise being discretionary, there is in the hands of an unscrupulous, vindictive or passionate judge, means of oppression and cruelty which should not be allowed in any free government. To disbar an attorney, is to inflict upon him a punishment of the severest character. He is admitted to the bar only after years of study. The profession may be to him the source of great emolument. If possessed of fair learning and ability, he may reasonably expect to receive from his practice an income of several thousand

> dollars a year; equal to that derived from a capital of one or more hundred thousand dollars. To disbar him having such a practice is equivalent to depriving him of this capital. It would often entail poverty upon himself and destitution upon his family. Surely, the tremendous power of inflicting such a punishment should never be permitted to be exercised, unless absolutely necessary to protect the court and the public from one shown by the clearest legal proof to be unfit to be a member of an honorable profession."

The Supreme Court of California in recent decisions has recognized the rule that in proceedings to revoke or suspend a license to practice a profession the accused is entitled to a judicial hearing, "because the person whose license had been revoked or suspended by the action of the board would otherwise **be deprived of a property right without due process of law,** as guaranteed by both the federal and the state constitutions".

Laisne v. California State Board of Optometry, 19 Cal. (2d) 831, 834, 123 Pac. (2d) 457;

Drummey v. State Board of Funeral Directors, 13 Cal. (2d) 75, 87 Pac. (2d) 848;

Dare v. Board of Medical Examiners, 21 Cal. (2d) 790.

These decisions follow the earlier California cases of

Hewitt v. State Board of Medical Examiners, 148 Cal. 590, and

Suckow v. Alderson, 182 Cal. 247,

both of which hold that the right to practice any profession is **"a valuable property right,** in which, under

the constitution and laws of the State, one is entitled to be protected and secured."

It is submitted that no attorney can be deprived of the right to practice his profession because of his failure to pay dues into the treasury of a corporation which is in its workings in all particulars similar to a private lodge, order or association.

2. The legislature has no constitutional power to impose such a restriction on the right to practice law. True, the legislature in the exercise of its power to tax may levy an occupational tax upon lawyers. That question is not involved here because the State Bar dues are not a tax. They are not levied for a public purpose. They are not paid into the treasury of the State of California. The dues are not a license because they are not imposed solely for the purpose of regulating the legal profession, or for the purpose of regulation and revenue. They may be spent, as heretofore stated, for any purpose that the board of governors sees fit, and they become the property of the corporation. It is elementary hornbook law that state legislatures have no authority to authorize taxation in aid of private enterprises or objects, even where there is no express constitutional prohibition, and taxation is unauthorized to take private property if it is not for public use, even though the public may be incidentally benefited.

Citizens Savings Assn. v. Topeka, Fed. Cas. No. 2734;

Loan Assn. v. Topeka, 87 U. S. 655;

Kelly v. Pittsburgh, 104 U. S. 78, 26 L. Ed. 658;

Dodge v. Mission Township, 107 Fed. 827, 46 C. C. A. 661, 54 L. R. A. 242;

Sutherland-Innes Co. v. Evart, 86 Fed. 597, 30 C. C. A. 305;

Cole v. LaGrange, 19 Fed. 871, affirmed 5 S. Ct. 416, 113 U. S. 1, 28 L. Ed. 896;

St. Paul Trust and Savings Bank v. American Clearing Co., 291 Fed. 212;

City of Los Angeles v. Lewis, 175 Cal. 777, 167 Pac. 390;

Briggs v. Raleigh, 195 N. C. 223, 141 S. E. 597;

Union Ice Co. v. Ruston, 135 La. 898, 66 So. 262;

Baldwin v. Fuller, 39 N. J. L. 576,

"Taxation, by the very meaning of the term, implies the raising of money for public use, and excludes the raising if for private objects and purposes."

Allen v. Inhabitants of Jay, 60 Me. 124;

McClelland v. State, 37 N.E. 1089,

"A republican form of government forbids the raising of taxes for any but public purposes, and Article Fourth, Section 4 of the Constitution of the United States" (the state) "is forever bound to maintain such form of government, and cannot assert legislative power inconsistent with it. . . . Moreover, fundamental rights existing under and protected by our constitution are further protected by the Fourteenth Amendment which voids

any act of state legislation in denial of the fundamental law of the land."

Beach v. Bradstreet, 85 Conn. 344, 349, 82 Atl. 1032.

A great jurist who was and still is the outstanding authority on the law of taxation, says:

> **"It is implied in all definitions of taxation that taxes can be levied for public purposes only.** Differences of opinion frequently arise concerning the power to impose taxation in particular cases, but all writers who treat the subject theoretically and all jurists agree on the fundamental requirement that the purpose shall be public, and they differ, when they differ at all, upon the question whether the particular purpose proposed is within the requirement."
>
> I *Cooley on Taxation* (3d Ed.), p. 181.

3. Moreover, the taxing power resides in the legistive branch of the government exclusively, and may not be delegated by the legislature to private administrative agencies or corporations, or to any individual, officer, board or commission.

Parks v. Board of Commissioners, 61 Fed. 436;
Tarpey v. McClure, 190 Cal. 593, 213 Pac. 983;
Smith v. Farrelly, 52 Cal. 77;
Houghton v. Austin, 47 Cal. 646.

The act in question is obnoxious to the fundamental principle, well stated in *Parks v. Board of Commissioners,* supra, that "the power to tax must be limited to the necessities for the purposes of government, and

the agencies for local taxation should be fixed and their powers limited by organic law, and they should be so selected as to be directly answerable for their official acts to their local constituencies or districts to be taxed."

As previously shown, the members of the board of governors of the State Bar of California are answerable neither directly nor indirectly to those who are forced to contribute to its support, and they are subject to removal neither by the membership of the Bar nor by any court. This is a patent taking of property without due process of law.

4. The provisions of the State Bar Act requiring the payment of dues cannot be upheld as a license fee for the regulation of the legal profession because the expenditure of the funds is not limited to regulatory purposes. The funds may be expended for personal or political objects; they have been expended for legislative lobbying and the employment of so-called public relations counsel, who render no conceivable service of any value. It is submitted, moreover, that the legislature has no power to regulate the legal profession, that matter resting entirely with the judicial branch of the state government. The legislature may, indeed, prescribe qualifications for admission to the bar; it may limit the pursuit of the occupation of a lawyer to persons who have been found to possess a prescribed degree of knowledge or skill, and to enact reasonable regulations to protect the public against the evils which may result from incapacity or ignorance. But once admitted to practice, an attorney holds his office for life, or during good behavior; he can only be

deprived of his right to practice by the judgment of a court after a full and fair hearing and upon clear and convincing proof that he no longer possesses that degree of integrity requisite to entitle him to practice an honorable profession. He cannot be deprived of his right to practice for nonpayment of dues to a corporation or association, as that has no bearing upon his moral character or professional qualifications. It must also be observed that the legislative power to regulate, suppress or prohibit an occupation is limited to those occupations which are or which may become, dangerous or detrimental to the public. This principle has been recognized by the Supreme Court of California in

City of Sonora v. Curtin, 137 Cal. 583, 70 Pac. 674,

in which Justice Cooper uses the following language:

> "A police regulation or restraint is for the purpose of preventing damage to the public or to third persons. There are certain lines of business and certain occupations which require police regulation because of their peculiar character, in order that harm may not come to the public or that the threatened danger may be averted. **Where the profession or business is not dangerous to the public, either directly or indirectly, it cannot be subjected to any police regulation whatever which does not fall within the power of taxation for revenue.**
>
> If the board in this case had the power to issue the license as a police regulation, it would have the power to prohibit the defendant from practicing law without the license. **There is nothing about the practice of the profession of the law which makes the business dangerous to the public.**

> **It does not threaten the public health or safety, nor is it demoralizing to the public.** It is one of the most honorable and learned professions, and its members are among the most conservative citizens in any community."

We, accordingly, submit that the questions involved are substantial questions.

THE STAGE OF THE PROCEEDINGS AND THE MANNER IN WHICH THE FEDERAL QUESTIONS WERE RAISED.

The federal question was first raised at the preliminary investigation before a committee of the State Bar which instigated the proceedings, The objections made on that occasion are not part of the record because the State Bar has refused to furnish a copy of the record of those proceedings or even to allow the reporter's notes of the same to be read to your petitioner. Respondent cannot complain of the lack of a record which has been suppressed by its own arbitrary and high-handed act, for which petitioner is in nowise to blame. (See affidavit of Petitioner, Typewritten Transcript of Record, page 27.)

It was also raised in the Supplemental Brief of Petitioner (Trans. page 14, *et seq.*), and was considered and passed upon by the State Court.

REASONS RELIED UPON FOR ALLOWANCE OF WRIT.

The State Court has decided a federal question of substance not heretofore specifically determined by this court, in a manner not in accord with the ap-

plicable decisions of this court, for the reasons heretofore stated under the heading of the grounds upon which it is contended that the questions involved are substantial. Restatement of what we said under that heading is omitted in the interest of brevity.

The question is of vast importance to the legal profession and to every independent and self-respecting lawyer, not only in the State of California, but in other states, such as Nevada, Washington and Oklahoma, which have enacted similar statutes designed to regiment and Hitlerize the bar, and place an honored calling under the control of commissars instead of courts.

It has not heretofore been determined by this court. We submit that it should be determined.

In view of the authorities heretofore presented, we deem a supporting brief unnecessary to the consideration of this petition, and forbear its presentation in the interest of brevity.

Wherefore, your petitioner respectfully prays that this petition for a writ of certiorari to the Supreme Court of the State of California be granted, and that the judgment and decree of the State Court be reversed.

Dated, San Francisco, California,
July 24, 1944.

WILLIAM F. HERRON,
Petitioner in Propria Persona.

CERTIFICATE.

I hereby certify that I have been duly admitted to practice law in the State of California since October 15, 1909; that I am a member of the bar of the United States District Courts for the Northern and Southern Districts of California and of the Western District of Washington, and of the United States Circuit Court of Appeals for the Ninth Circuit, and that I have not been admitted to the bar of this court for the reason that I have never been in the District of Columbia, but that I have briefed numerous cases in this court; that I have no counsel, and am unable to employ any; that in my judgment the foregoing petition is well founded in law as well as in fact, and that said petition is not interposed for delay.

Dated, San Francisco, California,
July 24, 1944.

WILLIAM F. HERRON.

(Appendices A and B Follow.)

Appendix A

(Vol. 24 A. C. 50.)

In the Supreme Court of the State of California

S. F. Nos. 16,833, 16,881, 16,959

In Bank

William F. Herron,	Petitioner,
vs.	
The State Bar of California,	Respondent.

BY THE COURT

Now pending review by this court are three disciplinary proceedings instituted against the petitioner during the years 1940 to 1943 upon charges of professional misconduct arising out of the commission of acts involving moral turpitude (Bus. & Prof. Code, chap. 4, art. 6, § 6106) and of violation of his oath and duties as an attorney at law (Bus. & Prof. Code, chap. 4, art. 6, § 6103; art. §§ 6067, 6068). Commensurate with the import of the successive recommendations of the Board of Governors of The State Bar of California in these three matters, it is appropriate that they be considered in one opinion preliminary to a

determination of the full measure of discipline to be imposed.

The first proceeding concerned the petitioner's alleged failure to take adequate steps to protect the interests of one of his clients in a quiet title action which he had commenced on her behalf, with the result that a default judgment was entered against her. After a rather extended hearing, the sessions of which were held intermittently during the course of some eleven months, the local administrative committee found the petitioner guilty of the charges preferred against him. However, the three members of said committee were not in agreement as to the measure of discipline to be imposed, two recommending that the petitioner be suspended from the practice of law for a period of two years and the third being of the opinion that the petitioner should be disbarred. The Board of Governors, after denial of the petitioner's motion for leave to present additional evidence and for a hearing de novo, adopted the findings of the local administrative committee, with one exception as will hereinafter be noted, but reduced the period of suspension recommended by the majority of said committee to three months.

The second proceeding related to the petitioner's alleged failure to complete specific arrangements made with certain clients in relation to the prosecution of an appeal, with the result that, contrary to their wishes, the case was submitted to the appellate court for decision without oral argument by the petitioner. After several hearings in the matter, the local admini-

strative committee found the charges to be sustained by the evidence and recommended the petitioner's suspension from the practice of law for a period of ninety days. The Board of Governors, after full consideration of the record and the petitioner's statement made at the hearing before it, adopted the findings of the local administrative committee, with a slight amendment in the interest of accuracy in the recital of the factual sequence of pertinent events, but recommended that the petitioner be disbarred.

The third proceeding arose out of the petitioner's practice of law while under suspension by order of this court for nonpayment of his dues to The State Bar. The local administrative Committee found in accordance with the charges as made in the notice to show cause issued in the matter and recommended that the petitioner be suspended from the practice of law for a period of ninety days. The Board of Governors, on a review of the record, approved and adopted the findings of the local administrative committee but recommended the petitioner's disbarment.

As to the first two proceedings above listed, the petitioner directs his main argument to the insufficiency of the evidence to sustain the charges made therein against him. The third proceeding he does not question upon its factual basis, but he does contest the board's recommendation as being too harsh under the circumstances, and as a further objection he urges the invalidity of pertinent portions of the State Bar Act concerning the payment of dues and the assessment of penalties for noncompliance therewith. In

all three proceedings he challenges the propriety of the action followed by the different local administrative committees and the board herein in predicating their respective disciplinary recommendations in part upon a consideration of the petitioner's past record and conduct. With these principal points of dispute in mind, it is necessary at the outset to recite in some detail the prevailing factual situations as disclosed by the respective records herein.

The First Disciplinary Proceeding
S. F. No. 16,833

On October 16, 1939, one Theresa M. Peters consulted the petitioner with reference to the proper legal action to be followed for the recovery of title to a certain lot in Burlingame which she had formerly owned. In 1934 foreclosure proceedings were taken against this piece of property in behalf of the Union Building and Loan Association, which was then being liquidated by the State Building and Loan Commissioner. After informing the petitioner of these facts, Miss Peters stated that the commissioner had agreed to let her purchase the property but later had refused to abide by the arrangement and was then on the verge of selling it to some persons by the name of Skreden. The petitioner agreed to represent Miss Peters in the matter, and she in the course of one of her initial visits to his office—on October 16, 17, or 18, paid him $25 on an agreed fee of $50.

On October 19, 1939, the petitioner filed on behalf of Miss Peters and against the Skredens and certain

fictitious defendants a quiet title action predicated upon the theory of adverse possession, and a *lis pendens* was duly recorded. (The petitioner claims that he instituted these legal proceedings in reliance upon Miss Peters' statement that she had paid taxes on the property for the preceding five years, but as shown in the findings made by the local administrative committee and adopted by the board, there was a sharp conflict in the evidence upon the question of whether the petitioner's client did so advise him, as well as upon the further consideration of whether she then mentioned the entry of a judgment taken against her in 1938 and quieting title in another with respect to this same property.) The Skredens filed an answer in the action disclaiming any interest in the property in question, but a corporation which had been served with summons as a fictitious defendant interposed an answer and cross-complaint, claiming ownership of the lot. Thereafter the petitioner in behalf of his client filed an answer to the cross-complaint, and the matter was set for trial on April 25, 1940.

The next time that Miss Peters discussed the pending quiet title action with the petitioner was on April 12, 1940. On that occasion she gained the impression that the petitioner was not entirely familiar with all of the circumstances involved, and accordingly on April 14, 1940, she sent him a detailed letter recounting the pertinent facts with regard to the controversy over the property in question. Among other things, Miss Peters stated therein that "From 1934 to 1939 the Building and Loan Commissioner held title to the

property * * * and during this period they paid all the taxes on the property," and that in a quiet title action brought by the commissioner in 1937 judgment was obtained against her with respect to this same property. On April 16, 1940, the petitioner answered this lengthy report received from Miss Peters, commented that "considerable research work" would be necessary before he could "predict the outcome," and requested that she remit the balance of the retainer fee.

On April 20, 1940, Miss Peters again consulted with the petitioner regarding the pending litigation, and he then informed her that preparation for the trial of the case would involve extra work, for which he would have to charge an additional fee. In accord with such proposal, Miss Peters paid him the sum of $20, and the petitioner signed a receipt therefor as follows: "Received of Therese M. Peters $20.00 on account of *trial fee* in *Peters v. Skreden, et al.* Balance $30.00." A few days later pursuant to the agreement of the parties, Miss Peters was given in this matter a further credit of $5.00, an amount which she had originally paid to the petitioner on account of his contemplated services with reference to an entirely different affair but which were in fact never rendered by him—hence the transfer. The petitioner arranged for the continuance of the trial of the case to May 31, 1940.

Meanwhile, for the purpose of verifying the facts recited in Miss Peters' letter of April 14, 1940, the petitioner checked the court records in Redwood City affecting the property in question. From such exam-

ination he found that the Building and Loan Commissioner had secured a judgment in 1938 quieting title to the premises, enjoining Miss Peters "from asserting any right, title, interest or estate whatsoever" therein, and decreeing a money award of $1960 against her "for the unlawful withholding of possession" of the said property. According to the findings of the local administrative committee herein, the evidence as to the petitioner's next step in the matter was in direct conflict. The petitioner testified that on May 9, 1940, he wrote to Miss Peters a letter stating, in substance, that she had no case because of the existence of the 1938 quiet title judgment, that in his opinion "it would be utterly futile to proceed with the trial," but that since the matter was set for hearing on May 31, 1940, there was ample time for her to "confer with other counsel if [she] be so advised." He also claimed to have repeated these statements to her in the course of a telephone call on May 30, 1940. Miss Peters denied receiving this letter from the petitioner and claimed that he gave her no oral notification either of his desire to withdraw from the case or of the new trial date. Without resolving this material conflict, the local administrative committee found that no formal steps were taken by the petitioner, pursuant to the provisions of section 284 of the Code of Civil Procedure, to effect his withdrawal as counsel for Miss Peters in the pending litigation; that he did not appear at the trial on May 31, 1940; and that on said day judgment by default was rendered against her and in favor of the cross-complainant in the

action. Upon its consideration of the evidence on this point, the board, in adopting the findings of the local administrative committee, made its only exception thereto and expressly found that the petitioner "wrote and mailed to said Therese M. Peters said letter dated May 9, 1940."

The petitioner took no further action of any kind on behalf of Miss Peters in connection with the property in question, nor did he return, or make any offer to return, the $50, or any part thereof, paid by Miss Peters on account of this matter, as above stated. He justifies his retention of this sum upon the claim that the time he spent working on the case would warrant such charge. The present disciplinary proceeding was instituted in September, 1940, following Miss Peters' lodging of a complaint with The State Bar in July, 1940, and the preliminary investigation thereupon undertaken by the authorized local administrative committee.

Viewing this evidence in the light most favorable to the petitioner, it is clear that he failed to fulfill his professional obligations to his client, Miss Peters. Without regard for conflicts in the testimony, the following points stand undisputed: (1) the petitioner's acceptance of a payment from Miss Peters "on account of trial fee" in the pending quiet title litigation when he knew the facts would not support the theory upon which he had commenced the action—adverse possession and the payment of taxes on the property for the preceding five years; (2) his knowledge prior to the scheduled trial date, from an exami-

nation of the pertinent court records showing the precise terms of a prior quiet title judgment entered against his client with respect to this same property, that persistence in the prosecution of the pending litigation might subject both him and Miss Peters to contempt of court proceedings; and (3) his failure under these circumstances to effect, in the manner provided by law, his withdrawal as the attorney in the case for Miss Peters, who admittedly had not agreed that he be relieved of his responsibilities therein and who, without the benefit of legal representation at the trial, suffered the entry of an adverse judgment by default in the matter. The petitioner advances many contentious claims—such as Miss Peters' lack of good faith in her original presentation of the facts to him, the meagreness of the fee retained by him for his services after the deduction of necessary expenditures made by him in connection with the commencement of the quiet title action, and the absence of damage sustained by her by reason of the entry of the default judgment, since no act or omission on his part could prevail against the bar of the prior judgment against her. However, these arguments cannot nullify the importance of the following matters: (1) the petitioner's acceptance of money for the purpose of prosecuting the quiet title proceedings begun by him *after* he had received from his client a definite statement of the true facts in the case showing that she had no cause of action therein; (2) his failure to return said money to her; and (3) his neglect to appear at the trial of the quiet title action, in explana-

tion of his position, while still charged as her counsel of record. Also immaterial to the main issue of the petitioner's duty to Miss Peters as his client is his elaborate recital of her past negotiations with the Building and Loan Commissioner and various realty men in her efforts to reacquire the lot in question—matters which formed the basis of his request for leave to present additional evidence and for a hearing de novo before the board, and which that body properly deemed irrelevant in denying his application. Suffice it to say at this point that with reference to disciplinary proceedings the definition of turpitude as anything done "contrary to justice, honesty, modesty or good morals" has long been approved by this court (*Marsh v. State Bar,* 210 Cal. 303, 307 [291 P. 583]; *Dudney v. State Bar,* 214 Cal. 238, 240 [4 P.2d 770]), and within this concept the petitioner's misconduct in relation to his duties and obligations as an attorney is clearly included.

THE SECOND DISCIPLINARY PROCEEDING
S. F. No. 16,881

In the prosecution of an appeal from an adverse judgment in a certain negligence action, Doris Zwerin Unger and her son, Kenneth Carlton Zwerin, also an attorney, in November, 1941, employed the petitioner to write the briefs and make the oral argument before the District Court of Appeal of this state. The briefs were prepared, the petitioner received $100 for his work in connection therewith, and the printing and filing expenses were paid by his clients.

The case was then set for hearing by the District Court of Appeal in Los Angeles on May 20, 1942, and it was agreed that the petitioner should make the oral argument there, for which services his compensation would be $50, to be paid as follows: $25 in cash and two railroad tickets from San Francisco to Los Angeles and return on the Daylight Limited for himself and his wife. On account in this matter, Mr. Zwerin some time during the latter part of April, 1942, gave the petitioner $5.00. Thereafter, and on May 18, 1942, in the early afternoon, there was delivered to the petitioner in the office of Mr. Zwerin by the latter's secretary an envelope containing a check for $20 and two round-trip railroad tickets as specified. The petitioner took the check, which he subsequently cashed, but he left the envelope with the tickets therein enclosed and stated that he would return at 3:30 p. m. on that day. He did not so return to Mr. Zwerin's office, but Mrs. Herron did go there that afternoon and obtained the tickets. The following morning, May 19, 1942, she presented them to the Southern Pacific Company and secured a refund therefor, an amount originally paid by Mr. Zwerin. She thereupon advised Mr. Zwerin's office of her action and suggested that the money be collected from her husband, the petitioner. No part of the $50 so advanced was ever returned by the petitioner to his clients. In explanation of this remissness, he claims that Mr. Zwerin's refusal several days later to discuss the matter further with him precluded his making proper amends.

The petitioner failed to make the scheduled trip to Los Angeles, he failed to present an oral argument in the case before the District Court of Appeal as he had theretofore agreed to do, and he failed to notify his clients in time that he would not so appear in court so that they might procure other legal representation in the matter. Thereafter, and on May 20, 1942, when, in accordance with the calendar of said court, the Zwerin case was called for hearing, a notation was made therein that argument was waived and the cause was ready for submission; in June, 1942, the court so ordered, and thereafter the judgment was affirmed against the petitioner's clients. (*Zwerin v. Riverside Cement Co.,* 52 Cal. App.2d 715 [126 P.2d 920].) On July 1, 1942, the petitioner was served with a notice to appear and show cause before a local administrative committee of The State Bar why he should not be disciplined for professional misconduct as charged by reason of the foregoing factual situation.

The only point of conflict in the record relates to the financial arrangement between the petitioner and his clients with respect to his presentation of the oral argument upon the submission of their case to the District Court of Appeal for decision. The petitioner admits that he very strongly outlined to Mr. Zwerin and his mother the great advantage of the proposed procedure before said court, and accordingly they, while satisfied with the briefs prepared by the petitioner in the matter, were most anxious that he perform this additional service if it would be of such

benefit to their appeal. As to the point here in controversy, the petitioner refers to his testimony before the local administrative committee to the effect that the agreement on the subject contemplated his receipt of $50 expense money *plus* the above mentioned railroad transportation for him and his wife, and he argues that when the cash amount was not forthcoming at the time of his scheduled departure from San Francisco, he was justified in not making the trip as planned. But contrariwise, Mr. Zwerin testified that the terms of the understanding comprehended no more than the full payment of $50 to the petitioner—$25 in cash and $25 for the railroad fare—and this account was embodied in the findings of fact made by the local administrative committee and approved by the board. In attacking the so accredited arrangement, the petitioner claims that it was absurd on its face—allowing the petitioner but $25 to defray his expenses in Los Angeles over a period of several days consequent of a likely delay in the calling of the Zwerin case for oral argument by reason of a crowded court calendar. But the conflict on the point is immaterial, for whether the petitioner was to receive an expense allowance of $50 or $25 in addition to the mentioned railroad transportation, the record conclusively establishes: (1) that, without notice to his clients that the sum advanced was insufficient as he understood their agreement respecting his compensation, he accepted the smaller amount and his wife secured the railroad tickets for the planned trip; and (2) that he failed

to go to Los Angeles to make the oral argument in his clients' case before the District Court of Appeal. Moreover, there is evidence that factors other than monetary considerations actuated the petitioner's acceptance of the now disputed arrangement: (1) his extension of professional courtesy to a fellow attorney; (2) his hope of future appeal work from this initial contact; and (3) his plan to combine business with pleasure on the contemplated Los Angeles trip so that he and his wife might enjoy a "small vacation." In this condition of the record, the petitioner's failure to appear in the appellate court for oral argument of the Zwerin case constituted a most serious and flagrant breach of his professional duty.

THE THIRD DISCIPLINARY PROCEEDING
S. F. No. 16,959

The record herein shows without conflict the following facts: After the petitioner had been given the statutory notice of his delinquency and demand had been duly made upon him for certain fees and penalties prescribed and required by law (Bus. & Prof. Code, chap. 4, art. 8, § 6143), this court, by its order of November 23, 1942, suspended the petitioner from the practice of law in this state (Bar Misc. 1752), and the period of suspension remained in effect until June 3, 1943, when he was reinstated by payment of dues and arrears. Meanwhile and on May 4, 1943, the petitioner had filed in the Superior Court for Marin County in this state a complaint in an action for damages and a petition in a related guardian-

ship proceeding, wherein he designated himself respectively as "attorney for the plaintiffs" and "attorney for the petitioner." On May 11, 1943, the petitioner was directed to appear before a local administrative committee of The State Bar to show cause why he should not be disciplined for his disregard of the order of this court suspending him from practice. (Bus. & Prof. Code, ch. 4, art. 6, § 6103.) Some three weeks following the issuance of the order to show cause in this matter the petitioner paid all arrearage shown on the records of The State Bar to be outstanding against him and thus effected his reinstatement as an active member of the profession on June 3, 1943, as above mentioned.

After a hearing at which the petitioner appeared in his own behalf, the local administrative committee found the petitioner to be guilty as charged by reason of his filing of the two pleadings above noted. It also found specifically that eleven prior disciplinary proceedings had been filed against him. Of these, four were consolidated for consideration by this court and resulted in an order of suspension from practice for a period of one year (*Herron v. State Bar,* 212 Cal. 196 [298 P. 474]); two are those heretofore recited as now pending determination in this court (S. F. Nos. 16,833 and 16,881) and, as stated in the fore part of this opinion, respectively carry recommendations of suspension from practice for three months and disbarment; two were dismissed by the Board of Governors after formal hearing; and the remaining charges were characterized by the respective pre-

liminary investigating committees as not calling for disciplinary action, so that The State Bar proceeded no further in those matters. As a conclusion from its findings herein the local administrative committee observed that while it "was not impressed with the explanation of [petitioner] that he was without actual notice or knowledge that the order of suspension was in force and effect on the date when he filed the proceedings which formed the basis of the notice to show cause herein," it was of the view that "the violation complained of was the result of a careless, rather than a wilful, disregard of the court's order and that severe disciplinary action which otherwise might be considered proper in the light of prior charges, is not warranted herein." Accordingly, it recommended that the petitioner be suspended from the practice of the law for a period of ninety days.

The petitioner did not appear at the time set for the hearing of this matter before the Board of Governors, but prior thereto he had advised said body by telephone that "he wished to waive oral argument and was willing to have the proceeding submitted on the record." Thereupon, after full consideration and discussion of the matter, the findings of fact as made by the local administrative committee were approved and adopted by the board. However, it rejected the local administrative committee's disciplinary recommendation, and instead, upon a more stern view of the petitioner's instant infraction in the light of his past conduct, recommended the extreme penalty of disbarment. Without detailing the petitioner's tes-

timony offered in explanation of his action in having engaged in the practice of law during the period of his suspension for the nonpayment of State Bar dues, suffice it to say at this point that such evidence in the record attests the propriety of the conclusion above quoted from the local administrative committee's report in this matter and constrains this court to regard that body's recommendation as more commensurate with the nature of the offense here involved.

The petitioner's challenge of the constitutionality of pertinent provisions of the State Bar Act prescribing the power of the Board of Governors to fix and collect membership dues and assess penalties. (Bus. & Prof. Code, ch. 4, art. 8, §§ 6140-6145) requires no extended discussion here. The validity of the State Bar Act as a regulatory measure under the police power has been heretofore determined by this court, and it has been held that the reasonable expenses necessary to pay the costs of enforcement of the act, in furtherance of the purposes thereof, may be imposed upon the membership in the form of fees or dues. (*Carpenter v. State Bar,* 211 Cal. 358, 360 [295 P. 23]; *Hill v. State Bar,* 14 Cal.2d 732, 735 [97 P.2d 236].) The petitioner relies with much confidence upon *City of Sonora v. Curtin,* 137 Cal. 583 [70 P. 674]. However, that case has no application here. It merely stands for the proposition that a *city* may not impose upon an attorney, licensed as such by the courts, a tax for *revenue purposes only* where his acts fall short of carrying on a business within its jurisdiction, and

accordingly, a municipal ordinance providing, without qualification, that "*every lawyer* shall pay" a quarterly license would be invalid as a revenue measure. Upon such basis the case is fully distinguished in *In re Galusha,* 184 Cal. 697, 700 [195 P. 406] and in *In re Johnson,* 47 Cal.App. 465, 468 [190 P. 852]. In so far as the cited opinion in the course of discussion negatives a *city's power to regulate the practice of law,* it simply accords with the settled principle that such an undertaking by a municipality would constitute *an interference with state affairs.* (*City of Sonora v. Curtin, supra,* pp. 587-588; *cf. In re Galusha, supra,* p. 699.) Wholly distinct from the problem there considered is the present situation involving the Board of Governors' imposition of an annual fee upon a practicing attorney as a purely *regulatory exaction authorized* within the prescribed limits *by the Legislature in furtherance of the purposes of the State Bar Act.* (*State Bar of California v. Superior Court,* 207 Cal. 323 [278 P. 432].) Accordingly, for failure to pay membership dues, an attorney is properly subject to suspension from practice within this state. (*Carpenter v. State Bar, supra; Hill v. State Bar, supra.*)

There now remains for consideration the measure of discipline appropriate to the determination of the pending proceedings. The petitioner is fifty-eight years of age and was admitted to the practice of law in this state in October, 1909. The respective records herein disclose that in the course of his legal career and beginning with the year 1927, the petitioner has

had frequent difficulties with his clients concerning money transactions and his failure to give reasonably prompt attention to the matters entrusted to his care. As heretofore noted, they had varying results in so far as disciplinary considerations are concerned: some, as consolidated for hearing, culminated in this court's order that the petitioner be suspended from practice for one year (*Herron v. State Bar* (1927), *supra,* 212 Cal. 196), some were dismissed by the Board of Governors upon recommendation of the respective local administrative committees involved, and in the others no formal proceedings were instituted on the complaints lodged with The State Bar. Regardless of any argument as to whether or not it is proper here to attach any importance to previous charges for which no discipline was administered, certainly those infractions for which the petitioner was suspended from practice for a limited period (*Herron v. State Bar, supra*) should be taken into account in fixing the degree of discipline to be imposed in relation to the professional misconduct subject of the present proceedings. (*Ring v. State Bar,* 4 Cal.2d 196, 197-198 [47 P.2d 704]; *Mills v. State Bar,* 6 Cal.2d 565, 567 [58 P.2d 1273]; *Petersen v. State Bar,* 21 Cal.2d 866, 871 [136 P.2d 561].) The petitioner's reference to various principles of criminal law as negativing the propriety of considering herein such established prior wrongdoing—professional misconduct for which a measure of discipline has already been exacted (*Herron v. State Bar, supra*)—has no bearing upon the disposition of disciplinary proceedings, which

"this court has uniformly treated * * * as peculiar to themselves and governed exclusively by the code sections specifically covering them." (*Marsh v. State Bar,* 2 Cal.2d. 75, 78 [39 P.2d 403].) As was said in *Prime v. State Bar,* 18 Cal.2d 56, 62 [112 P.2d 881], wherein the analogy of rules of criminal practice and procedure was likewise advanced and rejected: "The important factor is whether the attorney lacks the necessary and proper moral qualifications to continue in practice." Also to complete this recital of the petitioner's previous professional difficulties, mention should be made of The State Bar's application to this court in 1932 for his disbarment upon the record of his conviction of a misdemeanor involving moral turpitude and the denial of such summary discipline upon the ground that the trial court's order in the criminal action "suspending sentence" was equivalent to an order of probation. (*In re Herron,* 217 Cal. 400 [19 P.2d 4]; *cf. In re Phillips,* 17 Cal. 2d 55 [109 P.2d 344, 132 A.L.R. 644].) In the determination of the measure of discipline warranted in connection with the present charges against the petitioner, regard need only be had for such past misconduct as has been heretofore established (*Herron v. State Bar, supra*), and it will be given no more than its just consideration for the protection of the public, the legal profession and the courts. (*Marsh v. State Bar, supra,* at p. 79.)

While on the basis of the three factual situations now under review, it is not necessary for this court to pass upon the petitioner's professional integrity, the evidence here does disclose his complete disregard for

the fiduciary relation of an attorney to his clients and an absence of fair dealing in handling their affairs. In both the Peters and Zwerin matters—the first two proceedings hereinabove outlined—the petitioner indisputably accepted fees without rendering the stipulated services and without making some adequate arrangement for the legal representation necessary in those cases. The petitioner's communication to Miss Peters relative to the lack of merit in her quiet title action shortly before the trial date would not excuse him from adhering to the fee arrangement made with her and appearing at the scheduled hearing so as to prevent the entry of a default judgment against her while he still remained as her counsel of record. Still more objectional is the petitioner's remissness in his professional obligations in the Zwerin situation by reason of his failure, *without prior warning or explanation,* to make the trip to Los Angeles to present the oral argument in the appellate court as agreed. These instances of grave misconduct gave his respective clients just and serious cause for complaint, and may not be condoned. In contrast, the remaining charge here involved—the petitioner's practice of law during the period of his suspension by order of this court for nonpayment of State Bar dues—becomes a matter of secondary importance. While obedience to orders of court must of course be required, the petitioner did secure his reinstatement shortly after his citation by The State Bar and his violation appears to have been "a careless, rather than a wilful, disregard" of duty. From this aspect such infraction pales in significance

as a disciplinary cause here, and it need not be the subject of further reference.

After considering carefully the full record in the Peters and Zwerin cases, together with the petitioner's prior record as heretofore limited, in order to determine his fitness to continue in practice, it is impossible to reach any conclusion but that his disbarment is warranted. Whatever might be said in favor of a milder punishment for single infractions not involving deliberate moral turpitude, there can be no doubt that any lawyer who is guilty of successive breaches of duty with relation to the management of his clients' affairs should be deprived of the license under which he is authorized to practice law, and by which he has been recommended to the public as a person worthy of trust. This court has heretofore been lenient in its disposition of disciplinary charges against the petitioner (*Herron v. State Bar, supra,* 212 Cal. 196; *In re Herron, supra,* 217 Cal. 400), but this policy cannot continue when the petitioner persists in his neglect to avail himself of the opportunity to mend his ways. (*Marsh v. State Bar, supra,* 2 Cal. 2d 75.) In making an order of disbarment this court should and does exercise much care, for the denial of an attorney's right to practice law in this state is a grave matter, placing an indelible stain upon his name which affects him generally as a citizen, as well as depriving him of his chosen means of gaining a livelihood. As was said in *Wilcox v. State Bar,* 2 Cal.2d 614, 621 [42 P.2d 631]: "Once disbarred, experience teaches us that the barrier which is thereby raised

becomes almost insuperable to reinstatement." But with due regard for the various factors of consideration herein reflecting the petitioner's lack of strength and stability in his moral concepts with relation to his professional duties, no alternative is open to this court.

It is therefore ordered that the petitioner be disbarred from the practice of law in this state and that his name be stricken from the roll of attorneys, effective thirty days after the filing of this decision.

DISSENTING OPINION

While I agree that the conduct of petitioner as disclosed by the record now before us warrants some discipline, I believe that the penalty of disbarment is altogether too severe and grossly disproportionate to the nature of the charges against him. It cannot be said that any of the charges against petitioner amount to embezzlement or misappropriation of funds. The Peters and Zwerin charges arose out of apparent misunderstandings with his clients. They indicate that petitioner was somewhat lax in the handling of his client's cases, but in view of the finding of the Board of Governors with respect to his advice to Miss Peters relative to the lack of merit in her case shortly before the time fixed for the trial, I do not think it can be said that he was guilty of misconduct merely because he did not withdraw from the case. He did advise her to obtain other counsel.

The Zwerin case presents a different situation. In my opinion, he should either have gone to Los Angeles and argued the case or returned the expense money to his clients. His conduct in this case warrants some discipline.

In regard to practicing while suspended by order of this court, I think the record shows a rather trivial infraction, and in view of the fact that he became reinstated as soon as he was cited to appear before The State Bar, I think that the amount of discipline for this alleged misconduct should be rather mild.

In the Peters case a majority of the local administrative committee recommended that petitioner be suspended for a period of two years. The Board of Governors adopted the findings of the local administrative committee with one exception, but reduced the period of suspension recommended by the majority of said committee to three months.

In the Zwerin case the local administrative committee unanimously recommended petitioner's suspension from the practice of law for the period of ninety days. The Board of Governors adopted the findings of the local administrative committee with a slight amendment, but recommended that petitioner be disbarred.

In the third proceeding, which arose out of petitioner's practice of law while under suspension by order of this court for nonpayment of his State Bar

dues, the local administrative committee recommended that petitioner be suspended for a period of ninety days. The Board of Governors approved the findings of the local administrative committee, but recommended that petitioner be disbarred.

It is obvious that petitioner's conduct in the Peters case did not impress the members of the Board of Governors as being of serious import, or that there were extenuating circumstances which the board considered in ameliorating the discipline which should be administered, as the board recommended a suspension for the period of only ninety days It is likewise obvious that petitioner's conduct in the other two cases did not impress the members of the respective local administrative committees as being of serious import, as each of said committees recommended a suspension for a period of only ninety days in each of these cases While the cumulated charges indicate a course of conduct which reflects more unfavorably upon petitioner than a single charge, I am disposed to the view that the only one of the three charges against petitioner of any consequence arises out of his conduct in the Zwerin case While his conduct in that case, based upon the findings of the local administrative committee, is reprehensible, it certainly is not of sufficient gravity to justify petitioner's disbarment, especially in view of the recommendation of the local administrative committee that he be disciplined by suspension from practice for the period of ninety days And even if we conclude that petitioner was

guilty of unprofessional conduct arising out of the other two charges against him, the combined effect of these charges, in my opinion, is not sufficient to warrant the infliction of the extreme penalty of disbarment.

While I would concur in a judgment suspending petitioner from practice for a short period of time for his conduct in connection with the Zwerin case, I find nothing in the record in any or all of these cases to support or justify a judgment of disbarment.

Carter, J.

Filed April 3, 1944.

A. V. Haskell, Clerk.

Appendix B

THE PERTINENT PROVISIONS OF THE CALIFORNIA STATUTE THE VALIDITY OF WHICH IS DRAWN IN QUESTION ON THE GROUND OF ITS BEING REPUGNANT TO THE CONSTITUTION OF THE UNITED STATES.

In 1927 the legislature of the State of California passed a statute known as the State Bar Act and which is still cited as such, although now incorporated in Division III of the Business and Professions Code of the State of California, approved February 3, 1939. The number appearing at the head of each section is the number of the section of the Business and Professions Code:

6000. This chapter of the Business and Professions Code constitutes the chapter on attorneys. It may be cited as the State Bar Act.

6001. The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.

The State Bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives, enter into contracts and acquire, hold, encumber, dispose of and deal in and with real and personal property.

The term of existence and the powers of the State Bar may be changed or terminated at any time by an act of the Legislature.

6002. The members of the State Bar are all persons admitted and licensed to practice law in this

State except justices and judges of courts of record during their continuance in office. * * *

6010. The State Bar is governed by a board known as the board of governors of the State Bar. The board has the powers and duties conferred by this chapter.

6011. The board consists of fifteen members. * * *

(Here follow provisions for the time and manner of election of members of the board of governors.)

6025. Subject to the laws of this State, the board may formulate and declare rules and regulations necessary or expedient for the carrying out of this chapter.

The board shall by rule fix the time and place of the annual meeting of the State Bar, the manner of calling special meetings thereof and determine what number shall constitute a quorum of the State Bar. * * *

6028. The board may make appropriations and disbursements from the funds of the State Bar to pay all necessary expenses for effectuating the purposes of this chapter.

No member of the board shall receive any other compensation than his necessary expenses connected with the performance of his duties as a member of the board.

6029. The board may appoint such committees, officers and employees as it deems necessary or proper, and fix and pay salaries and necessary expenses.

6030. The board shall be charged with the executive functions of the State Bar and the enforcement of he provisions of this chapter.

6031. The board may aid in the advance of the science of jurisprudence and in the improvement of theadministration of justice. * * *

6040. The board of governors may create local administrative committees and delegate to them such of its powers and duties as seems advisable. The board may in its discretion divide any committee into units or sections with concurrent powers and duties in order to handle the work of the committee more expeditiously. The board may also prescribe the powers of thecommittee and the units or sections thereof.

6041. A local administrative committee shall be composed of active members of the State Bar, and each member of the board of governors, unless he decines to act, shall be ex-officio a member of the local administrative committee where he maintains his principal office for the practice of the law.

6042. The members of local administrative commitees, except ex-officio members of the board of governors, shall hold office at the pleasure of the board.

6043. Each local administrative committee shall:

(a) Receive and investigate complaints as to the conduct of members.

(b) Make findings, whenever ordered by the board.

(c) Make recommendations and forward its repot to the board for action.

The board may:

(a) Act upon the report.

(b) Take additional evidence.

(c) Set aside the report and hear the whole case *de novo.*

6044. The board, or, with its approval, any local administrative committee, without the filing or presentation of any complaint, or upon any complaint, if a complaint be filed, may initiate and conduct investigations of all matters affecting or relating to:

(a) The State Bar, or its affairs.

(b) The practice of the law.

(c) The discipline of the members of the State Bar.

(d) Any other matter within the jurisdiction of the State Bar.

6045. The local administrative committee shall perform such other duties in furtherance of the execution of the provisions of this chapter as the board may direct. * * *

6049. In the conduct of investigations and upon the trial and hearing of all matters, the board and any committee having jurisdiction, including the examining committee, may:

(a) Take and hear evidence pertaining to the proceeding.

(b) Administer oaths and affirmations.

(c) Compel, by subpoena, the attendance of witnesses and the production of books, papers and documents pertaining to the proceeding.

6050. Whenever any person subpoenaed to appear and give testimony or to produce books, papers or documents refuses to appear or testify before the board or a committee, or to answer any pertinent or proper questions, or to produce such books, papers or documents, he is in contempt of the board or the committee.

6051. The chairman or presiding officer of the board or the committee shall report the fact that a person under subpoena is in contempt of the board or committee to the superior court in and for the county in which the proceeding or investigation is being conducted and thereupon the court shall issue an attachment in the form usual in the superior court, directed to the sheriff of the county, commanding the sheriff to attach such person and forthwith bring him before the court.

On the return of the attachment, and the production of the person attached, the superior court has jurisdiction of the matter, and the person charged may purge himself of the contempt in the same way, and the same proceedings shall be had, and the same penalties may be imposed, and the same punishment inflicted, as in the case of a witness subpoenaed to appear and give evidence on the trial of a civil cause before a superior court.

6052. Any member of the board, or of any committee or unit or section thereof, having jurisdiction, may administer oaths and issue any subpoena.

No witness shall be compelled to attend a hearing outside of the county in which he resides unless the distance is less than one hundred miles from his place of residence to the place of hearing.

Depositions may be taken and used in the same manner as in civil cases. * * *

6075. In their relation to the provisions of Article 6, concerning the disciplinary authority of the courts, the provisions of this article provide a complete alternative and cumulative method of hearing and determining accusations against members of the State Bar.

6076. With the approval of the Supreme Court, the Board of Governors may formulate and enforce rules of professional conduct for all members of the bar in the State.

6077. The rules of professional conduct adopted by the board, when approved by the Supreme Court, are binding upon all members of the State Bar.

For a wilful breach of any of these rules, a member may be disciplined by reproval or by suspension from the practice of law for a period not to exceed one year.

6078. After a hearing for any of the causes set forth in the laws of the State of California warranting disbarment, suspension or other discipline, the

board has the power to recommend to the Supreme Court the disbarment or suspension from practice of members or to discipline them by reproval, public or private, without such recommendation.

The board may pass upon all petitions for reinstatement.

6079. In all cases involving disbarment, suspension or reproval, the hearing shall be held either in the county (a) where the party charged maintains his principal office for the practice of the law, or (b) where he resides, or (c) where the offense is committed, as may be determined by either the board or the local administrative committee having jurisdiction of the hearing.

6080. The board shall keep a record of all disciplinary proceedings. In all disciplinary proceedings resulting in a recommendation to the Supreme Court for disbarment or suspension, the board shall keep a transcript of the evidence and proceedings therein and shall make findings of fact thereon. The board shall render a decision to be recorded in its minutes.

6081. Upon the making of any decision recommending the disbarment or suspension from practice of any member of the State Bar, the board shall immediately file a certified copy of the decision, together with the transcript and the findings, with the clerk of the Supreme Court.

6082. Any person complained against and any person whose reinstatement the board may refuse to

recommend may have the action of the board, or of any committee authorized by it to make a determination on its behalf, pursuant to the provisions of this chapter, reviewed by the Supreme Court in accordance with the procedure prescribed by the court.

6083. A petition to review or to reverse or modify any decision recommending the disbarment or suspension from practice of a member of the State Bar shall be filed with the Supreme Court within sixty days after the filing of the decision recommending such discipline.

Upon such review the burden is upon the petitioner to show wherein the decision is erroneous or unlawful.

6084. When sixty days have elapsed after the filing of the certified copy, if no petition for review has been filed, or when upon review the decision of the board of governors shall be affirmed, the Supreme Court shall make its order either:

(a) Striking the name of the person from the roll of attorneys.

(b) Suspending him for a period mentioned in the decision.

6085. Any person complained against shall be given reasonable notice and have a reasonable opportunity and right:

(a) To defend against the charge by the introduction of evidence.

(b) To be represented by counsel.

(c) To examine and cross-examine witnesses.

He shall also have the right to the issuance of subpoenas for the attendance of witnesses to appear and testify or produce books and papers, as provided in this chapter.

6086. The board of governors, subject to the provisions of this chapter, may by rule provide the mode of procedure in all cases of complaints against members. * * *

6125. No person shall practice law in this State unless he is an active member of the State Bar. * * *

6140. The board shall fix the annual membership fee for active members at a sum not exceeding ten dollars. The annual membership fee for active members is payable on or before February first of each year.

The organization fee for an attorney licensed to practice in this State on or before July 29, 1927, who has failed to register as a member of the State Bar, is the sum of three dollars.

6141. The annual membership fee for inactive members is the sum of two dollars, and it is payable on or before February first of each year.

6142. Upon the payment of the annual membership fees, each member shall receive a certificate issued under the direction of the board evidencing the payment.

6143. Any member, active or inactive, failing to pay any fees after they become due, and after two

months' written notice of his delinquency, shall be suspended from membership in the State Bar.

He may be reinstated upon the payment of accrued fees and *such penalties as may be imposed by the board,* not exceeding double the amount of delinquent dues.

6144. All fees shall be paid into the treasury of the State Bar, and, when so paid, shall become part of its funds.

6145. The board annually shall prepare a statement showing the total amount of receipts and expenditures of the State Bar for the twelve months preceding. The statement shall be promptly certified under oath by the president and treasurer to the Chief Justice of the Supreme Court.

Other than this last section the State Bar contains no provision for any accounting by the State Board of its expenditures, nor does the Act provide any procedure for the approval or disapproval of expenditures made by the board of governors or subordinate committees, either by the court or by the membership of the bar.

(7)

FILED
NOV 6 1944
CHARLES ELMORE CROPLEY
CLERK

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1944

No. 291

WILLIAM F. HERRON,
Petitioner,

vs.

THE STATE BAR OF CALIFORNIA,
Respondent.

PETITION FOR A REHEARING.

WILLIAM F. HERRON,
645 Mills Building, San Francisco 4, California,
Petitioner in Propria Persona.

PERNAU-WALSH PRINTING CO., SAN FRANCISCO, CALIFORNIA

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PETITION FOR A REHEARING.

To the Honorable Harlan Fiske Stone, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

The petition of William F. Herron for a rehearing of the order made by this Honorable Court the 16th day of October, 1944, denying the petition for a writ of certiorari for failure to comply with the rules respectfully shows to Your Honors:

1. The petition for a writ of certiorari on file herein complies with the rules of this Honorable Court in all respects. It contains a short and summary state-

ment of the matter involved, a statement particularly disclosing the basis upon which it is contended that this Court has jurisdiction to review the judgment in question, a statement of the grounds upon which it is contended that the questions involved are substantial, the stage of the proceedings and the manner in which the Federal questions were raised, and the reasons relied upon for the allowance of writ. Petitioner, in the preparation of the petition, followed the form which he has heretofore used in other petitions for writs of certiorari to this Honorable Court. Among these are:

Schoenamsgruber v. Hamburg American Lines, 293 U. S. 547, 55 S. Ct. 125, 79 L. Ed. 651, granting certiorari;

Collins v. Welsh, 75 Fed. (2d) 894, 99 A. L. R. 1319, certiorari denied, 55 S. Ct. 921, 295 U. S. 762, 79 L. Ed. 1704;

Dunn v. California, 311 U. S. 701, 61 S. Ct. 139, 85 L. Ed. 454;

Long v. California, 311 U. S. 698, 61 S. Ct. 136, 85 L. Ed. 452.

These are only the most recent cases in which petitioner has prepared petitions for writs of certiorari to this Court, and in no case has the accuracy of his procedure or his complete compliance with the rules been drawn into question.

2. The printing of the record pursuant to the provisions of Section 7 of Rule 38 was wholly unnecessary because the sole point urged as a ground for the granting of the writ was the invalidity of certain provisions of the so-called State Bar Act of the State

of California which are printed in full in the appendix to the petition for a writ of certiorari, Appendix B, page 27, et seq.

3. The portion of the record showing the stage of the proceedings and the manner in which the Federal questions were first raised was not printed in the petition and ~~was not~~ included in the typewritten transcript for the ~~reasons~~ set forth in the affidavit of the petition on file herein: to wit, that the respondent suppressed and refused to furnish the record of the proceedings at the time that petitioner first called into question the validity of the statute upon the ground of its being repugnant to the provisions of the Fourteenth Amendment to the Constitution of the United States. As an appendix to this petition your petitioner prints a copy of the said affidavit omitting the caption and jurat.

Your petitioner further submits that there has been a substantial compliance by him with the rules of this Court, that a substantial Federal question has been raised, which, in the interests of the legal profession throughout the entire country, ought to be settled by this Honorable Court upon the merits.

Wherefore, your petitioner prays for a rehearing in the above entitled cause and for the issuance of a writ of certiorari as prayed for in the petition.

Dated, San Francisco, California,
November 1, 1944.

WILLIAM F. HERRON,
Petitioner in Propria Persona.

CERTIFICATE.

I hereby certify that in my judgment the foregoing petition is well founded in law, as well as in fact, and that said petition is not interposed for delay.

Dated, San Francisco, California,
November 1, 1944.

WILLIAM F. HERRON,
Petitioner in Propria Persona.

(Appendix Follows.)

Appendix

[Title of Court and Cause.]

State of California,
City and County of San Francisco.—ss.

William F. Herron, being first duly sworn deposes, says, and respectfully shows to the Supreme Court of the United States: That under the rules of the Supreme Court of the United States relative to petitions for writs of certiorari to review the final judgment or decree of the highest court of the State in which a decision might be had where there is drawn in question a validity of a statute of the State on the ground of its being repugnant to the constitution or laws of the United States the petitioner is required to set forth the stage of the proceedings and the manner in which the federal questions were raised. That in the cause entitled as above your petitioner raised the federal question, to-wit, that certain provisions of the so-called State Bar Act of the State of California were invalid upon the ground that they were repugnant to the Constitution of the United States, and particularly that the said provisions were violative of the due process of law clause in the Fourteenth Amendment to the Constitution of the United States; that the proceedings which culminated in the judgment order or decree of the Supreme Court of the State of California sought to be reviewed on certiorari were initiated by a so-called local administrative committee of the said State Bar at San Francisco, California; that your petitioner personally appeared be-

fore the said committee and objected to any proceedings being taken against him upon the ground that the said statute was repugnant to the Constitution of the United States, and that the provisions of said statute requiring the payment of dues and penalties by attorneys into the treasury of the State Bar and giving to the Board of Governors of the State Bar the power to fix the amounts of said dues and penalties were a deprivation of property without due process of law in violation of the provisions of the said Fourteenth Amendment to the Constitution of the United States. That at the said hearing the said objections of your petitioner raising the federal question aforesaid were taken down in shorthand by an assistant secretary of the said State Bar of California but were never transcribed or made a part of the record because the said State Bar of California has adopted a rule entitled Rule 24 of Rules of Procedure of the State Bar of California, which said rule is in the words and figures following, to-wit:

> "Rule 24. *Reporting and Transcribing Informal Proceedings; Use of Transcript.* Unless otherwise ordered by the board, the proceedings in a preliminary investigation shall not be reported or transcribed, except when, in a particular case, the secretary shall have given his approval in advance, before the commencement or during the pendency of the preliminary investigation.
>
> "Unless otherwise ordered by the board, a transcript of the proceedings in a preliminary investigation shall not be made available for any purpose other than the conduct of such preliminary inves-

tigation and then only as the committee may direct."

That on the 7th day of July, 1944, your petitioner applied to Mrs. Georgie McLaughlin, the assistant secretary of the said State Bar, who took the said proceedings in shorthand, for the transcription of her shorthand notes of the said proceedings, and in particular of the objections of petitioner raising the said federal question, *and petitioner offered to pay for a copy of such transcription;* but the said assistant secretary informed your petitioner *that she was forbidden by the said State Bar not only to furnish petitioner with a copy of her shorthand notes which showed the raising of the said federal question but that she was likewise forbidden even to read her notes to your petitioner.*

That by reason of the foregoing facts the said objections do not appear of record, and that the failure of the record to show the said raising of the said federal question before the said committee at the inception of the proceedings is due solely to the aforesaid unjust and arbitrary rule adopted by the said State Bar, and your petitioner prays this Honorable Court that since the said record is made unavailable to him by reason of the act of the respondent, that this affidavit be considered in lieu of a record of the proceedings aforesaid.

WILLIAM F. HERRON.

(Verified.)